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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

High-level panel discussion on the question of the death penalty

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 30/5. It provides a summary of the high-level discussion on the question of the death penalty held on 1 March 2017 at the thirty-fourth session of the Council. The objective of the panel discussion was to continue the exchange of views on the question of the death penalty and to address violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

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I. Introduction

1. Pursuant to its resolution 30/5, the Human Rights Council held its biennial high-level panel discussion on the question of the death penalty on 1 March 2017, at its thirty-fourth session. The panel was chaired by the President of the Human Rights Council, opened by the United Nations High Commissioner for Human Rights and the Minister of State for European Affairs of France, and moderated by Professor of Social History at the University of the West Indies Verene A. Shepherd. The panellists were the former President of Tunisia (2011-2014), Moncef Marzouki; the Chair of the Kenya National Commission on Human Rights, Kagwiria Mbogori; the representative of Thailand to the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, Seree Nonthasoot; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer.[1]

II. Opening remarks and statements

2. In his introductory remarks, the President of the Human Rights Council pointed out that, in its resolution 30/5, the Council had requested the organization of the panel discussion and decided that it would address violations related to the use of the death penalty, in particular with respect to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

3. The United Nations High Commissioner for Human Rights stated that capital punishment raised serious issues in relation to human dignity and human rights, including the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.[2] He recalled that the Supreme Court of Canada and the constitutional courts of Albania, Hungary, Lithuania, South Africa and Ukraine had all considered that the death penalty violated that prohibition. International and national bodies had concluded that several methods of execution were likely to violate the prohibition of torture because of the pain and suffering they often inflicted on the convicted person. Accordingly, it was increasingly difficult for a State to impose the death penalty without violating international human rights law. He highlighted that the "death row phenomenon" — a long and highly stressful period that most individuals endure while waiting for years, even decades, frequently in isolation, for an uncertain outcome — had been found to constitute torture or other cruel, inhuman or degrading treatment or punishment by the Human Rights Committee and other international, regional and domestic bodies, including the Supreme Court of California, in the United States of America. He also recalled that the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had referred to the existence of an evolving standard according to which the death penalty constituted torture or other cruel, inhuman or degrading treatment or punishment and had recommended that the Human Rights Council should request a comprehensive legal study to be conducted on the emergence of a customary norm prohibiting the use of the death penalty under all circumstances (see A/67/279, paras. 53-64 and 79).

4. The High Commissioner noted that almost 10 years had passed since the General Assembly had adopted its resolution 62/149, in which it had first called upon States to establish a moratorium on executions with a view to abolishing the death penalty. During that decade, global resistance to capital punishment had increased, to the point where three quarters of all countries had either abolished the death penalty or did not practice it. There was cause for concern, however, as the number of executions in some States had increased and as some States where a moratorium had been in place for many years had recently

[1] The webcast is available at http://webtv.un.org/search/panel-discussion-on-death-penalty-9th-meeting-34th-regular-session-human-rights-council/5343577825001?term=death penalty.

[2] The opening statement of the High Commissioner is available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=21258&LangID=E.

resumed executions. Persons sentenced to death and their family members had inflicted on them severe and unjustifiable mental and physical suffering, including as a result of inadequate information about the timing of executions, the failure to return the body to families for burial and a lack of information about the location of the burial. Referring to the *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and remedy" Framework*, the High Commissioner commended the steps taken by pharmaceutical companies to prevent prison authorities from purchasing medication for use in lethal injections. Use of the death penalty should end, especially since it was applied in a manner that was capricious and frequently discriminatory and failed to demonstrate any deterrent effect beyond that of other punishments.

5. In his opening remarks, the Minister of State for European Affairs of France noted that the death penalty was being applied in over 20 countries and that there had been a record number of executions over the previous two years, following breaks in moratoriums and calls for the reintroduction of the death penalty. Some were trying to justify the reintroduction of capital punishment by invoking security concerns, such as terrorism or drug trafficking, despite the fact that the death penalty had no deterrent effect and was not a guarantee of security; moreover, renouncing capital punishment did not preclude a firm response to terrorism. The Minister concurred with the High Commissioner in highlighting that the use of the death penalty led to violations of the human rights of those convicted and of their relatives, and added that this had been mentioned in the reports of the Secretary-General and affirmed by the Human Rights Council. The death penalty was inhuman, unjust and ineffective. Hopefully, the panel discussion would encourage the Human Rights Council to take action on the subject. Abolishing the death penalty required the participation of many actors. The Minister paid tribute to the work carried out in that regard by representatives of civil society, journalists, human rights defenders and parliamentarians.

6. While international law did not explicitly equate the death penalty with torture, it did view it as incompatible with the right to life. Whatever the methods used and whatever the circumstances in which the executions were carried out, the death penalty always led to the intense physical and psychological suffering of those convicted and their relatives. The use of the death penalty did not respect human dignity and was undeniably cruel, inhuman or degrading treatment, a view already expressed by the European Court of Human Rights. The fight against the death penalty was a political struggle and a question of principle. Respect for human rights motivated France to fight for the universal abolition of the death penalty and the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The fact that two thirds of States had renounced capital punishment (in law or in practice), compared to 16 States 40 years ago, indicated that, despite recent setbacks, the trend was towards the abolition of the death penalty. Abolition initiatives have been launched in all regions and progress in Africa was particularly encouraging, confirming that the issue was one of principle, not culture. National judicial systems were urged to strengthen efforts to abolish the death penalty.

III. Contribution of the panellists

7. In her introduction, the moderator of the panel reiterated that the trend was in the direction of abolition, as over 160 States had either abolished the death penalty, had imposed a de jure or de facto moratorium on the use of the death penalty, did not actually practise it or did not have anyone on death row. In the Commonwealth Caribbean, no one had been executed since 2008 and hardly any countries had issued death sentences. Jamaica had not issued a death sentence since 2010 and no one there was on death row. That was in marked contrast to the situation between the sixteenth and nineteenth centuries, when the brutality of colonialism included the indiscriminate use of capital punishment in the Caribbean region. The retention of the death penalty was a colonial throwback. The prevalence of class and racial discrimination in the application of the death penalty had led to the persecution of the poor and the most marginalized. The psychological harm it caused and the potential for wrongful convictions and executions meant there was a need for exacting standards and a heightened level of due process in capital cases. Rising crime rates in some societies had led to calls for an increase in the use of the death penalty but the

number of executions was already high: at least 1,634 people had been executed in 25 States in 2015.[3] The moderator noted that some States had executed individuals under 18 years of age and that the main methods of execution qualified as torture or other cruel, inhuman or degrading treatment or punishment. In accordance with article 6 of the International Covenant on Civil and Political Rights, every human being had the inherent right to life, a right that should be protected by law. No one should be arbitrarily deprived of his or her life. The ideology, history and contemporary politics that shaped the application of the death penalty needed to be questioned and the stories of those wrongfully convicted and of the families who witnessed executions needed to be told in order to mobilize support for the abolition of the death penalty.

8. The former President of Tunisia spoke of the some 200 death penalty case files he had looked at involving individuals who had been awaiting death in deplorable conditions with no possibility of amnesty or of having their sentences commuted. He underlined the psychological torture that such individuals had been subjected to, some for over a decade. He said that it was preferable to commute a death sentence to life imprisonment as a first step towards a presidential amnesty. In his remarks, he also focused on the attempts to abolish the death penalty in Tunisia, the difficulties faced, the moratorium that had been put in place and the fact that the death penalty had not been applied since 1991, adding that in Tunisia the efforts to abolish the death penalty amounted to a political and cultural battle. One interpretation of the Koran viewed the killing of one person as killing the whole of humanity. He noted that some States had recently abolished the death penalty and said he hoped that Muslim countries would follow suit. Abolition represented a step in the progress of civilization, it was not a political issue.

9. The Chair of the Kenya National Commission on Human Rights explained why the death row phenomenon constituted torture or other cruel, inhuman or degrading treatment or punishment and spoke of the role of the National Commission in addressing the death row phenomenon. The Constitution of Kenya guaranteed the right to life, but that right was not absolute and Kenya retained the punishment of death by hanging for capital offences such as treason, murder, robbery or attempted robbery with violence. That said, Kenya had had a de facto moratorium on the death penalty since 1987, leading to an increase in the number of individuals on death row and to overcrowding. Efforts had been made to decongest prisons through the commutation of death sentences to life imprisonment: the President had commuted 223 death sentences to life imprisonment in 2003, 4,000 in 2009 and 2,747 in 2016. Although some death row inmates had been pleased with the commutations, many of them had refused to work, to be rehabilitated or to be reintegrated into the prison population, stating they had been ready to die for many years. In a 2011 survey of death row inmates, the National Commission had found that, given the weaknesses at various levels of the judicial process and the lack of adequate legal representation for those charged with capital offences, there was a real likelihood of miscarriage of justice and an extremely high possibility of wrongful conviction.

10. The Government of Kenya had acknowledged, in reports, that extended stays on death row caused undue mental anguish, suffering, psychological trauma and anxiety and constituted inhuman treatment. A public inquiry was being conducted by the Power of Mercy Advisory Committee, with support from the Kenya National Commission on Human Rights, to collect the views of Kenyan citizens regarding the abolition of the death penalty. Nevertheless, Kenyan courts continued to sentence offenders convicted of capital offences to death because that was the mandatory sentence for such offences. The Chair of the National Commission gave an overview of Kenyan jurisprudence on the issue of the constitutionality of presidential commutations of death sentences to life imprisonment and highlighted the disagreement between the Court of Appeal and the lower courts. In 2015, the National Commission, together with civil society stakeholders who were members of a coalition campaigning against the death penalty, had sent a petition to the Supreme Court questioning the constitutionality of the death penalty; the Supreme Court was expected to issue directions for the establishment of new jurisprudence. The National Commission had

[3] See https://www.amnesty.org/en/latest/news/2016/04/Alarming-surge-in-recorded-executions-sees-highest-toll-in-more-than-25-years/.

been and would remain a staunch advocate against the death penalty in Kenya. There was no humane way to extinguish a human life.

11. In response to questions from the moderator, the representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights made remarks that focused on the following: the impact of a lack of transparency and efforts under way in Asia to address that lack of transparency; the most effective actions and policies for the long-term prevention of secret executions; whether a lack of transparency constituted torture or other cruel, inhuman or degrading treatment or punishment; and whether the mandatory use of the death penalty violated the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

12. In relation to the lack of transparency, secret executions carried out without the knowledge of family members constituted cruel, inhuman or degrading treatment or punishment for the prisoner and his or her family members, whose psychological condition was negatively affected by the lack of information and the abrupt and clandestine nature of the execution. A lack of transparency was symptomatic of a deficiency in the rule of law because transparency entailed a clear regulatory framework and the provision of information, including: a clear and fully disclosed reasoning for the death sentence; a proper procedure for seeking a pardon or commutation of the death penalty; and advance notification of the execution following the denial of pardon. Defendants with access to a lawyer had to have information on the qualifications and experiences of the lawyer and had to be informed that they could change lawyers. Particularly in States members of ASEAN, the existence of a mandatory death penalty, which compelled a court to impose the death penalty without providing defendants with the opportunity to address motivation and mitigating factors, violated defendants' right to be heard and their right to life. Moreover, the mandatory death penalty precluded the courts from considering the circumstances of the offence and of the offender and any relevant aggravating factors.

13. Thailand had abolished the death penalty for minors and pregnant women and, as it had not executed anyone for eight years, was approaching de facto abolitionist status. However, Thailand should not only continue with its policy of gradually abolishing the death penalty, it should also examine the conditions of the approximately 120 prisoners who had been sentenced to death and who had sought pardons. The duration and condition of their incarceration and whether their long-term imprisonment constituted a form of torture or other cruel, inhuman or degrading treatment or punishment should be considered. Guidelines stipulating that prisoners who had been on death row for a certain amount of time should be entitled to an automatic pardon and release should be established. Thailand should engage with other ASEAN member States, especially those that retained the death penalty, to encourage abolition.

14. That was all the more urgent given that efforts had recently been made to reintroduce the death penalty. In that regard, once a State had ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, no reservation was possible, nor was the reintroduction of the death penalty. All States, in particular those that had ratified the Covenant, were called upon to adopt a strong position in favour of abolition. In its draft general comment No. 36, on article 6 of the Covenant, the Human Rights Committee should emphasize that States parties to the Covenant must not increase the number of crimes for which the death penalty could be imposed. All States were urged to reconsider the types of offences for which the death penalty was used and always apply the death penalty with extreme care and safeguards, and only for the most serious crimes. The death penalty should not be used to punish those guilty of drug offences, as capital punishment did not address the root causes of those offences and only offered a short-term solution. Moreover, it had been observed that the death penalty was often sought, in relation to drug offences, for political opponents and individuals from poor and marginalized populations.

15. In terms of future steps, the representative of Thailand to the ASEAN Intergovernmental Commission on Human Rights called for up-to-date, comprehensive, disaggregated and transparent data, including on the number of executions, the number of prisoners on death row and the time lapse from sentencing to execution. Data should be disaggregated by offence, gender and sexual orientation, nationality and immigration status,

economic and social status, and the profile of lawyers assigned to provide counsel. It should be used to analyse the potential for discrimination and the effectiveness of legal aid, to enhance transparency in the criminal justice system and to educate judges and public figures. The international human rights system, particularly the Human Rights Committee, and regional mechanisms had a role to play in sharing information and experiences and could be agents for change on the question of the death penalty. At the national level, the adoption of a national human rights plan that incorporated a commitment to phase out the death penalty would be helpful, as would civil society advocacy. In addition, it would be important to reform the criminal justice system, including by reconsidering the offences subject to the death penalty.

16. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment focused on whether there was an emerging customary norm prohibiting the death penalty in all circumstances. While customary international law had not yet evolved to prohibit the death penalty in all circumstances, which meant that it was theoretically possible to retain the death penalty in compliance with international law, in practice the increasingly rigorous conditions imposed by international human rights jurisprudence made it almost impossible to carry out the death penalty without violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. While article 6 of the International Covenant on Civil and Political Rights did not prohibit the death penalty, it subjected it to strict conditions. Article 7, however, prohibited torture and other cruel, inhuman or degrading treatment or punishment outright, leading to the conclusion that any execution that violated article 7 constituted an act of arbitrary deprivation of life.

17. Furthermore, since the adoption of the Covenant in 1966, international, regional and national practices and laws had evolved to favour the abolition of the death penalty. In that regard, the Special Rapporteur recalled the American Convention on Human Rights (1969) and the Protocol to that Convention to Abolish the Death Penalty (1990); the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Protocol No. 6 to that Convention concerning the abolition of the death penalty as amended by Protocol No. 11 (1983) and Protocol No. 13 to that same Convention concerning the abolition of the death penalty in all circumstances (2002); and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (1989). In contrast to the International Military Tribunal at Nuremberg (1945-1946) and the International Military Tribunal for the Far East (1946), the Rome Statute of the International Criminal Court (1998), the Statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (1993) and the Statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (1994) all prohibit the death penalty, even for war crimes, crimes against humanity and genocide. Over 160 Member States had abolished the death penalty or had introduced moratoriums, in law or in practice. The global trend towards the complete abolition of the death penalty might ultimately result in a generalized customary prohibition of the death penalty. Moreover, according to the European Court of Human Rights, the death row phenomenon[4] and any method of execution or the fear of execution[5] amounted to inhuman and degrading treatment.

18. The Special Rapporteur also spoke of methods of execution that inflicted unnecessary mental or physical suffering or humiliation and had been found to violate the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. They included execution by stoning, gas asphyxiation, hanging, the electric chair, burning, live burial, decapitation, lethal injection (when untested and/or not administered properly) and any form of secret or public execution. In a 2015 report, the Secretary-General concluded that the death penalty was incompatible with human dignity, the right to life and the

[4] *Soering v. United Kingdom*, judgment of 7 July 1989.

[5] *Al-Saadoon and Mufdhi v. the United Kingdom*, judgment of 2 March 2010.

prohibition of torture and other cruel, inhuman or degrading treatment or punishment (see A/HRC/30/18, para. 55). He highlighted that many national courts had reached the same conclusion and noted that a number of states in the United States of America had abolished the death penalty because it constituted an extreme form of physical and psychological suffering that violated the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

19. The Special Rapporteur emphasized that the issue of capital punishment was not simply a technical legal question. It was a retributive system and a deliberately dehumanizing punishment that intentionally inflicted pain and anguish on convicts and their families and that could be used to kill innocent people and irreparably harm their loved ones. The inherent human dignity of convicts, victims and families, and the dignity and moral authority of human society, needed to be reflected upon.

IV. Summary of the discussion

20. During the interactive phase of the panel discussion, representatives of the following States spoke: Botswana, Chile, Mexico,[6] Brazil,[7] Croatia,[8] Finland,[9] Singapore,[10] Portugal,[11] Paraguay, Montenegro, Australia, Greece, Spain, Argentina, Portugal, Mexico, New Zealand, Switzerland, Albania, Liechtenstein, Colombia, Algeria, Fiji, Papua New Guinea, India, Holy See, Kenya and Italy. Representatives of the following intergovernmental organizations also took the floor: the European Union and the Council of Europe. Representatives of the following non-governmental organizations contributed to the discussion: Amnesty International, American Civil Liberties Union, Center for Global Nonkilling, International Federation of Action by Christians for the Abolition of Torture, Friends World Committee for Consultation, Ensemble contre la peine de mort and International Bar Association.[12]

A. General remarks on the use of the death penalty

21. A large number of representatives of a range of legal systems, traditions, cultures and religious backgrounds expressed their total opposition, in all circumstances and at all times, to the death penalty and firmly supported its universal abolition. In that regard, they

[6] On behalf of Belgium, Benin, Costa Rica, France, Mongolia, the Republic of Moldova and Switzerland.

[7] On behalf of Albania, Andorra, Argentina, Armenia, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Bulgaria, Chile, Colombia, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, Fiji, Finland, France, Georgia, Germany, Greece, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Monaco, Mongolia, Montenegro, Namibia, the Netherlands, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Romania, Rwanda, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Timor-Leste, the former Yugoslav Republic of Macedonia, Ukraine and Uruguay.

[8] On behalf of Austria and Slovenia.

[9] On behalf of Denmark, Estonia, Iceland, Latvia, Lithuania, Norway and Sweden.

[10] On behalf of the Bahamas, Bahrain, Bangladesh, Barbados, Brunei Darussalam, China, the Democratic People's Republic of Korea, Egypt, Ethiopia, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Kuwait, the Lao People's Democratic Republic, Malaysia, Myanmar, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, the Sudan, Uganda, the United Arab Emirates and Yemen.

[11] On behalf of Angola, Brazil, Cabo Verde, Equatorial Guinea, Guinea Bissau, Mozambique, Sao Tome and Principe and Timor-Leste.

[12] Statements by the representatives of the following States were not delivered owing to lack of time: Mongolia, the United Kingdom of Great Britain and Northern Ireland, Saudi Arabia, Russian Federation and the Sudan. Statements by the representatives of the following non-governmental organizations were not delivered owing to lack of time: the Alsalam Foundation, Americans for Democracy and Human Rights in Bahrain, the Bahrain Institute for Rights and Democracy, Human Rights Advocates, the Swiss Catholic Lenten Fund, Plataforma Internacional contra la Impunidad and the Conseil international de soutien à des procès equitables et aux droits de l'homme. All statements are on file with the secretariat of the Human Rights Council and are available for consultation.

welcomed the continuing trend towards abolition and called for a universal moratorium with a view to universal abolition. Some representatives referred to the call for abolition as central to their foreign policy. Others referred to the remarks made by the Secretary-General[13] and the High Commissioner[14] at the start of the thirty-fourth session of the Human Rights Council, in which they touched on the death penalty and called for action towards its abolition. Reference was also made to the argument made by the former Special Rapporteur on extrajudicial, summary or arbitrary executions that international law could no longer be described as "retentionist", but instead that it required the progressive abolition of the death penalty (see A/71/372, para. 39). A number of representatives urged States to act in accordance with the spirit of article 6 (6) of the International Covenant on Civil and Political Rights.

I. National policies and practices regarding the question of the death penalty

22. Several State representatives said that the right to life was enshrined in their national Constitutions, prohibiting the imposition and implementation of executions, and that the protection of that right was a State's duty. Others pointed out that it was critical for States to interpret the right to life broadly. Many representatives said that the death penalty was incompatible with human rights, justice and human dignity, and violated the right to life. Some also referred to the dignity of the whole of society and said that the death penalty made killers of us all and that it was an affront to the dignity of all human beings. They emphasized that the abolition of the death penalty contributed to the progressive development and consolidation of human rights. The death penalty had no place in modern policies to combat crime. The aim of prison systems was to rehabilitate and reintegrate people into society, and the death penalty went against that aim. Some representatives emphasized that the abolition of the death penalty was a matter of principle, not culture. Accordingly, the death penalty in States that retained it should be progressively discontinued.

23. In terms of the practices adopted by States, it was noted that Fiji had removed the only reference to the death penalty in its legal system and that it did so under the weight of domestic and international opinion, because there was the necessary political will and as a result of the discussions held during the 2014 universal periodic review. Mongolia too had amended its criminal code to reflect the decision to abolish the death penalty. Some representatives noted that capital punishment had, during recent years, been reinstated in a number of States following a period of moratoriums. Others expressed concern about an increase in recent executions in States in the Persian Gulf region. The decrease in death sentences and executions in the United States during 2016 was noted, as was the fact that death sentences in that country were imposed in an arbitrary manner, depending not on the seriousness of the crime but on the poor quality of defence lawyers, the race of the accused or the victim and the county and state in which the crime occurred. Some representatives highlighted incremental reforms introduced to phase out the use of the death penalty. In that regard, reference was made to the experience of the United Kingdom of Great Britain and Northern Ireland. Among the incremental steps that States could take were restricting the scope of the application of the death penalty and strengthening safeguards, appeals and clemency options.

24. Some representatives stated that the death penalty was a matter of criminal justice, rather than human rights, and that its use was vital for guaranteeing peace, security and human rights for their citizens. There was no international consensus that the death penalty, when applied in accordance with due process and judicial safeguards, violated the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. Rejecting that argument, several other representatives highlighted the fact that human rights were universal and every State's criminal justice system should respect international human rights law obligations. Several representatives referred to various provisions of international human rights treaties that imposed restrictions on the use of the death penalty.

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[13] https://www.un.org/sg/en/content/sg/speeches/2017-02-27/secretary-generals-human-rights-council-remarks.

[14] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21229&LangID=E.

25. A small number of delegates said that it was the sovereign right of States to impose the death penalty. They mentioned the rights of victims of crimes, and public opinion in favour of capital punishment, to justify the retention of the death penalty. In response, others called for the voices of victims to be heard as part of an open discussion about the abolition of the death penalty.

26. Some representatives stated that the death penalty remained an important deterrent against the most serious crimes. Challenging that approach, several other representatives said that the death penalty was an ineffective and unproven deterrent of crime. Capital punishment did not serve any deterrent purpose in combating crime, including terrorism, and there was no need for any State to expand the use of the death penalty to include terrorism-related offences. Any measures to counter terrorist threats needed to be consistent with human rights. The harshness of the death penalty risked fanning the flames of extremism. Moreover, as no legal system was perfect, any miscarriage of justice in capital cases could be irreversible and fatal. The mere fact that innocent people had been executed was argument enough for abolishing the death penalty.

2. Regional efforts

27. Several representatives referred to regional efforts towards the abolition of the death penalty, including the adoption of the Protocol to the American Convention on Human Rights to Abolish the Death Penalty and of the declaration made at the Eleventh Summit of the Heads of State and Government of the Portuguese-Speaking Countries. [15] Representatives called for Africa to become the next abolitionist continent and said that, for that reason, the next regional congress against the death penalty would be held in Africa in 2018, in preparation for the Seventh World Congress against the Death Penalty, to be held in Brussels in February 2019. The representative of the Council of Europe reported that it was exploring ways to further promote the abolition of the death penalty worldwide and that it would share the results of its study on that topic. Other representatives spoke of efforts made to ensure that Europe would become an "execution-free continent" and deplored the recent executions in Belarus. The trend towards reinstating or broadening the application of capital punishment in the Asia-Pacific region, particularly in relation to crimes concerning drug offences, was also discussed. It was noted that States were increasingly interconnected in terms of their cooperation on criminal justice matters. With regard to extradition requests, it was suggested that a State could deny such a request from a State that retained the death penalty, which would show that there was a consequence to maintaining such a practice. It was also recommended that the ASEAN Intergovernmental Commission on Human Rights should study the mandatory application of the death penalty.

3. Partnerships and cooperation

28. Several representatives emphasized that various stakeholders, including national human rights institutions, civil society entities, political organizations, parliamentarians, religious bodies, academic institutions and networks, and trade unions, had a role to play in encouraging abolition or moratoriums by advising Governments, monitoring situations and raising awareness. Some representatives requested that resources be provided to conduct human rights awareness-raising programmes to educate the public on the value of abolishing the death penalty. Others said they were committed to fostering discussions on the effects of the death penalty and supporting initiatives and debates on capital punishment because listening to those who held different views was crucial. They also said that cooperation between Governments, parliaments and civil society organizations at the national and international levels was essential. As an example of such cooperation, reference was made to Italy, where a dedicated governmental task force worked with representatives of civil society to strengthen cooperation on the promotion of a universal moratorium on the use of the death penalty.

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[15] The declaration is available, in Portuguese only, at www.itamaraty.gov.br/en/press-releases/15623-11th-summit-of-the-heads-of-state-and-government-of-the-portugues-speaking-countries-brasilia-declaration-portuguese. Also see A/HRC/27/26, para. 50.

29. Representatives also said that national human rights institutions had a role to play in encouraging the abolition of the death penalty or the imposition of a moratorium by advising Governments, by engaging with civil society and the public to foster debate and by monitoring trials and compliance with international human rights law and standards. The challenges faced by national human rights institutions in carrying out such work included resource and capacity gaps and their inability to effectively monitor all criminal judicial processes.

4. Ratification of international human rights instruments

30. Several representatives stressed the importance of achieving the universal ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. They called for its universal ratification, stating that increased ratification was important for advancing the universal abolition of the death penalty.

31. Some representatives encouraged the Office of the United Nations High Commissioner for Human Rights (OHCHR) to continue to intensify its efforts towards universal ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

32. Representatives also called for the universal ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights.

5. Implementation of international human rights standards and safeguards

33. Several representatives emphasized that States that retained the death penalty must ensure compliance with international fair trial standards and the full protections set out in international human rights instruments, including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50). In that regard, some representatives of States that retain the death penalty agreed that rights and safeguards should be respected. Many representatives expressed concern, however, about the fact that universal safeguards were not always implemented, in particular with regard to the following: the use of the mandatory death penalty; the secret application of the death penalty; the failure to prevent miscarriages of justice; executions following unsafe convictions and unfair trials; public executions and the use of unregulated substances in lethal injections; the use of the death penalty for crimes that are not "most serious crimes" under international human rights law, such as drug-related offences; and the use of the death penalty against persons with disabilities and other groups at particular risk. Concerns were also raised about the use of capital charges by military commissions at Guantánamo Bay Naval Base, citing denial of due process rights, secrecy, inequality of arms and lack of independence.

B. Death penalty as torture or other cruel, inhuman or degrading treatment or punishment

34. Several representatives referred to the death penalty as a form of torture or other cruel, inhuman or degrading treatment or punishment and spoke of an emerging customary norm identifying it as such. They referred to the evolution of State practice according to which the death penalty was increasingly viewed as a practice incompatible with the prohibition of torture or other cruel, inhuman or degrading treatment or punishment and welcomed the emerging consensus on the matter. Refuting suggestions that the death penalty was not a matter of culture, religion or sovereignty, they said that there could be no justification for its use or for the use of torture.

35. Some State representatives hoped that the Human Rights Committee and other treaty bodies would soon state that capital punishment was contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and that the Committee's draft general comment No. 36 would take an unambiguously abolitionist stance in relation

to the death penalty. Representatives also drew attention to the work of two former Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, who had referred to the existence of an evolving standard by which the death penalty constituted torture or other cruel, inhuman or degrading treatment or punishment. Other representatives recommended that OHCHR study the connection between the death penalty and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

1. Confessions obtained as a result of torture

36. Several representatives expressed concern about torture being used to obtain confessions in cases that have led to the imposition of the death penalty. Some individuals who were tortured had confessed to capital crimes they had not committed. Convictions based on forced confessions allegedly extracted through torture or under duress in China, including in Taiwan, Bahrain, Iran (Islamic Republic of), Japan, Saudi Arabia, the Sudan, the United Arab Emirates and Yemen were mentioned. Some representatives recommended that national human rights institutions investigate allegations of confessions obtained through torture and present their findings to national judicial systems.

2. Lack of transparency

37. Several representatives spoke of the international human rights jurisprudence that held that lack of transparency, particularly in relation to secret executions, and lack of information concerning the timing of executions, the place of burial or the possibility of having a loved one's body returned constituted torture or other cruel, inhuman or degrading treatment or punishment. When discussing best practices in relation to trials in jurisdictions where the death penalty was still available, representatives noted that such trials must take place transparently so as to respect the rights of all people concerned. Secret executions were widely criticized as being deeply unfair to all concerned. The State secrets policy applied by China in relation to the number of people on death row and information about executions was mentioned in that regard.

38. The need for disaggregated, comprehensive, transparent and current data was emphasized. Such data would help inform the public and policymakers about the reality, efficacy and negative impacts of the death penalty. Data should be collected on the number of executions, the number of prisoners on death row and on the time lapse from sentencing to execution. Data should be disaggregated by offence, gender and sexual orientation, nationality and immigration status, economic and social status, and the profile of lawyers assigned to provide counsel. Such data could be used to analyse discrimination and the effectiveness of legal aid, to enhance transparency in the criminal justice system and to educate the public, judges and public figures about the death penalty and its consequences.

39. A number of representatives observed that a lack of transparency made it impossible to hold productive debates on the death penalty and its abolition. The role of political leaders in changing public opinion was also highlighted, as was the need for leaders to be well informed and courageous when presenting arguments in favour of abolition of the death penalty.

3. Poor and marginalized individuals

40. Some representatives observed that arguments in favour of abolition included the fact that, in practice, the death penalty discriminated between those who could and those who could not afford a good defence. Others observed that poor and marginalized individuals were disproportionately affected by the death penalty, as they were those most often accused of capital crimes and those least likely to benefit from effective and adequate legal representation. The absence of adequate legal assistance raised questions about the fairness of trials. The social and economic implications of capital punishment needed to be discussed.

4. Death row phenomenon

41. Several representatives reflected on the national, regional and international human rights jurisprudence that held that the death row phenomenon constituted torture or other cruel, inhuman or degrading treatment or punishment (see A/67/279, paras. 42-51). They noted, in particular, the undermining of human dignity, the inhuman and degrading conditions of detention and the unimaginable anxiety and intense psychological suffering of those on death row. Other delegates said that the foreknowledge of death at the hands of the State inevitably gives rise to severe mental pain or suffering falling within the ambit of torture and other cruel, inhuman or degrading treatment or punishment.

42. Concern was also expressed about the lack of respect for the rights of persons facing the death penalty abroad. In that regard, the panel was informed about a recent report published by the Inter-American Commission on Human Rights concerning the violation of the rights of an Argentinian on death row in the United States since 1996. The Commission had found that the prisoner had been kept in solitary confinement, leading to serious mental health issues, and that the detention conditions to which he was subjected constituted torture and were contrary to the American Convention on Human Rights.

5. Methods of execution

43. Some representatives said that, in terms of the physical pain and suffering caused by the death penalty, there was no evidence that any of the methods in use complied with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in every case. In its resolution 30/5, the Human Rights Council had recalled that all methods of execution could inflict inordinate pain and suffering and the former Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment had stated that all forms of execution caused unacceptable levels of pain and suffering.

44. Representatives referred to the European Union ban on the export of drugs used in lethal injections,[16] noting that the side effect of some drugs caused prolonged and unnecessary pain. They also recalled the measures taken by pharmaceutical companies in the United States to prevent the use of their medicines in executions and the court order directing the United States Food and Drug Administration to prevent the illegal importation of drugs used in executions. The Committee against Torture too had indicated that the use of lethal injections should be reviewed owing to their potential to cause severe pain and suffering (see CAT/C/USA/CO/2, para. 31, and CAT/C/USA/CO/3-5, para. 25). It was further noted that low-quality lethal injections or other methods leading to physical torture should be condemned and revised.

6. Impact on families and other individuals concerned

45. Some representatives discussed the impact of the death penalty on family members and other individuals around them. They reported that the children of parents sentenced to death suffered trauma and long-term consequences. The human rights of children of parents sentenced to death or executed in particular needed to be addressed, as did the anguish of relatives who did not know when their relative would be executed, who could not visit them or say their farewells. The lack of proper notice regarding the time and date of executions was particularly worrying. Representatives highlighted the cruelty of denying people a second chance at life in society and of denying families a second chance of life with their loved ones. States should render the process of clemency pleas more accessible and transparent, and they should demonstrate respect for the life, well-being and dignity of all concerned.

46. In addition, the use of the death penalty negatively affected other individuals. Attention was drawn to the pain and trauma suffered by executioners, some of whom had spoken with delegates during the seventy-first session of the General Assembly.

[16] Regulation (EU) 2016/2134 of the European Parliament and of the Council of 23 November 2016 amending Council Regulation (EC) No. 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.

Executioners told delegates how the pain and suffering they had endured while executing prisoners had led them to become strong advocates against the death penalty. Some representatives called for those who ordered the death penalty, in particular judges and prosecutors, to witness executions, in the same way as families and executioners did, so that they might fully understand the wider impact of the death penalty on families and other individuals concerned.

V. Conclusions

47. **In their concluding remarks, the panellists emphasized that the international community was moving towards the universal abolition of the death penalty and recommended that the death penalty be abolished by those States that still continued to use it. They expressed concern about the reintroduction of the death penalty in some States and the breaking of moratoriums in others. In that regard, the panellists recommended that every effort be made to reverse the trend to reintroduce the death penalty and to maintain moratoriums.**

48. **The panellists considered that the use of the death penalty posed fundamental questions about human dignity and the moral authority of human society as a whole. The emerging international consensus that the death penalty was a form of torture or other cruel, inhuman or degrading treatment or punishment was highlighted, as was the fact that a significant number of States already held that to be the case. The panellists recommended that the Human Rights Council request a comprehensive legal study on the emergence of a customary norm prohibiting the use of the death penalty under all circumstances.**

49. **The panellists acknowledged that abolition required political and public support, as well as technical assistance. They urged all stakeholders, including States, to cooperate and share knowledge so as to enable well-informed and inclusive discussions about the abolition of the death penalty in all States. They suggested reaching out to young people to explain the arguments in favour of abolishing the death penalty, with a view to building consensus. The panellists also called for the collection of disaggregated data on the number of executions, the number of prisoners on death row and the time lapse from sentencing to execution. In compiling such data, a wide range of socioeconomic factors should be considered.**

50. **Pending abolition, the panellists recommended that all prisoners be treated in accordance with international standards, including the right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment, that race and other grounds of discrimination that contribute to unfair trials and unsafe convictions be addressed and that transparency be ensured in death penalty cases.**

51. **The panellists underlined the role played by United Nations human rights mechanisms, in particular the human rights treaty bodies and the Human Rights Council, including the universal periodic review process and the work of the special procedure mandate holders, to advance discussions on the universal abolition of the death penalty.**